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Forum Juridicum

THE UNAUTHORIZED PRACTICE OF THE LAW

*Address delivered by Cuthbert Baldwin at the March meeting of the Shreveport Bar Association**

I feel very honored that the members of the second largest bar in the state should ask me to address them on a subject in which I have been most interested for many years.

With a realization that "The Unauthorized Practice of the Law" covers a field of considerable magnitude and with the realization also that busy lawyers are not interested in long-winded discourses, I have concluded, for your sake and mine, to put these remarks in writing.

In extending the invitation to me to address you, no time limit was suggested, and you will understand that, within the limited period that I have given myself, as I have heretofore said, for your benefit, this paper can only undertake to give you some highlights in connection with the subject.

In the report of the Standing Committee on Unauthorized Practice of Law of the American Bar Association, to the convention of that association in 1941, appears the following:

"The public, far more than the lawyers, suffers injury from unauthorized practice of law. The fight to stop it is the public's fight. No man is required to employ a lawyer if he does not wish to. But every man is entitled to receive legal advice from men skilled in law, qualified by character, sworn to maintain a high standard of professional ethics, and subject to the control and discipline of the court. Not only this, he must be served disinterestedly by a lawyer who is his lawyer, not motivated or controlled by a divided or outside allegiance.

"Unauthorized practice of law is the attempt by laymen and corporations to make it a business for profit of giving the

* The Louisiana Law Review has been requested by the Shreveport Bar Association to publish this address which will be of general interest and assistance to lawyers throughout the state, and is pleased to cooperate in its publication.

public, as a substitute, the services of unqualified and unprofessional persons, or to employ and furnish for profit, directly or indirectly, the services of lawyers who may be willing to sabotage professional ethics in order to secure employment.

"In either case, the public is cheated; either by receiving incompetent and unethical advice, or by being served by lawyers who are not disinterested, whose real client is not the person advised but the entrepreneur furnishing the services.

"In either case, the result is the breaking down of the standards of professional ethics or their entire absence, and a direct interference with the administration of justice and the protection of the public in the courts."

Those remarks summarize the situation in better words than I can find and should indicate to you the reason why the profession and the public should both lend their efforts to break up the unauthorized practice of law wherever it exists.

My experience over a period of years as a member of the committees of both the Louisiana State Bar Association and the New Orleans Bar Association has led me to the belief that the bar, as a whole, is very complacent about the situation.

The right to practice law is not a privilege or immunity granted to all citizens of the United States; this right is a franchise from the state conferred only for merit and is not a lawful business except for members of the bar who have complied with all the conditions required by statutes and the rules of court; and the Supreme Court of Louisiana has the inherent power and right to adopt such rules, as it may deem best, defining and regulating not only the conduct of those who are attorneys at law, but also the right to define and regulate the acts and conducts of persons who are engaged in the unauthorized practice of the law.

In the Articles of Incorporation of the Louisiana State Bar Association¹ it is provided that "no lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate." And the by-laws of your association² provide for the committee which is to handle the subject matter. This article, originally, called for one committee to be composed

1. Art. XIV, § 45.

2. Art. VII, § 10.

of one member from each congressional district in the state. With the idea in mind that a more workable plan would be to have separate committees in each congressional district, to be composed of one lawyer from each parish in the district, I prepared and submitted to the Board of Governors of the Louisiana State Bar Association a proposed amendment to the article, which was adopted at the meeting of the board on October 23, 1943. This amended by-law now established in each congressional district a Committee on the Unauthorized Practice of the Law composed, as I have said, of one lawyer from each parish in the district, who shall be appointed by the Board of Governors of the Louisiana State Bar Association, with one member from each committee designated as its chairman. For the purpose of coordinating the work of the committees, a general chairman is likewise appointed, who shall have general supervision over the committees in each district. This general chairman together with the chairmen of the committees of each district shall constitute an executive committee of the whole.

I believe that this set-up is the best obtainable. Each district now has its own committee, with adequate representation and composition and with much greater opportunity, because of territorial compactness, to hold meetings and give proper attention to any matters which may be submitted.

You must realize that these committees have no detective facilities and, therefore, must, of necessity, rely on the bar and the public to furnish the complaints and the facts to back them up. We have now the machinery with which to do the job.

Permit me to refer, briefly, to the statutes and decisions of the state pertaining to the subject. Act 163 of 1940³ defines and regulates the practice of law and prescribes penalties for the violation of it. The predecessor of this act⁴ (Act 202 of 1932) has been held constitutional, in *Meunier v. Bernich*,⁵ except insofar as certain language therein permitted laymen in effect to practice law without resort to court proceedings. The present act, which is word for word with its predecessor except as to the clause which was held unconstitutional, is, accordingly, one in aid of the court's inherent power to define and regulate the practice of law. Thus the bar of Louisiana today is in the position of having not only a statute which says what shall constitute the

3. Dart's Stats. (1939) §§ 442-449.1.

4. *Ibid.*

5. 170 So. 567 (La. App. 1936).

practice of law, and prescribes penalties for those who violate its provisions, but a decision in the case referred to upholding that statute without in any way abrogating the inherent power of the judiciary to define, when occasion may arise, what acts constitute the practice of law.

Act 81 of 1938,⁶ the Trust Estates Act, contains a section which was inserted therein on the insistence of the bar. At the time this Trust Estates Act was prepared the section which I am referring to was not included in it. The proposers and authors of the act, even after consultation with and upon the insistence of the bar, declined and refused to amend their draft. However, when the act reached the senate, it developed that this proposal by the bar struck willing ears, and it was suggested that unless the proposal was adopted and the act amended its passage would be doubtful. Section 100 provides, in effect, that no trustee, in discussing the terms or the creation of a trust, shall propose to the settlor or influence the settlor in the selection of any attorney to represent the trust estate. And, in the event an attorney is not named in the trust instrument, or, if named, becomes, at any time, incapable of acting, then, and in that event, the beneficiaries of the trust shall have the right to select the attorney. I am frank in saying that when this matter was handled for the New Orleans Bar Association we had the banks in mind. We were fearful that trust officers, wittingly or unwittingly, might divert business to banks attorneys to the detriment of those attorneys who had represented settlors during their lives.

I would like to interpose here this thought; if a client thinks enough of his attorney to have him prepare his will, the attorney should think enough of his client to suggest that his name be placed in the will. Disappointments will be fewer and criticism less if this procedure were followed.

Probably the most recurring complaint that has come to my attention has been in connection with the use of documents simulating court process. In some cases, I have endeavored to ascertain the names of the concerns printing these documents. In one instance that I recall there was printed on the bottom of the document the words "B. & B. Printing Company, Beaumont, Texas." An investigation on my part and by the Texas Bar Association's committee disclosed that no such concern existed. These documents are mostly sold by unscrupulous salesmen who are trans-

6. Dart's Stats. (1939) §§ 9850.1-9850.101.

iently in the state, and who know that their use is illegal but nevertheless are able to sell them to the unsuspecting businessmen. In all of these cases, there has been no difficulty in stopping the use of these forms by the person or firm who paid his or its good money for them.

There are certain businesses which are just as necessary in the community and have become just as much a part of it as our profession. I am referring particularly to real estate brokers and title companies. There is also the profession of accountancy, which has probably risen and reached a state of importance faster than any other profession. In the case of the realtors, you and I know that many of them are using so-called standard forms of contracts and leases. We know that on many occasions they transcend their legitimate bounds and impinge on our profession. The accountants may know as much about the tax laws as lawyers. Lawyers are too prone, when running into title difficulties, to pass the title on to a title company. Some lawyers won't even accept responsibility in connection with the examination of titles.

Title and abstract companies have the right to set forth the basis on which they are willing to insure titles. They do not have the right to render opinions concerning the validity of titles. I have found, in the case of the local title company in New Orleans, a willingness to cooperate with the bar, with the result that in its "Interim Title Insurance Binder Form," in which is stated the conditions under which its policy of insurance will be issued, there is a printed block, in large letters on its first page, reading "All matters contained herein should be referred to your attorney for attention."

In the last few years the American Bar Association has adopted a policy looking toward the settlement and adjustment of complaints through the formation of joint committees composed of members of the bar and members of the interested groups. Statements of principles have been formulated. The purpose is to seek a method through agreement of avoiding what was mounting into promiscuous litigation involving unauthorized practice. Thus, there is "The National Conference Group of the American Bar Association and the Trust Division of the American Bankers Association" and "A National Conference of Realtors and Lawyers"; and joint statements of principles in connection with the activities of collection agencies, lay adjusters and insurance underwriters have been adopted, through which there runs the general theme that those agencies shall not trespass on

the legal field in matters, generally, where legal advice is necessary; and the bar in turn recognizes the fact that its members should keep out of the other field. In many cases, as will be quite easily seen, it is not so easy to define the limit beyond which the laymen may not transcend. These agreements by the American Bar Association and the indicated groups are of comparatively recent origin and yet have to meet the test of time in order to determine their ultimate value. They are novel in that the bar is endeavoring to accomplish through mutual understandings what it had previously threatened, and in many cases accomplished, through court action.

As to the curbing of practices before the numerous federal agencies, bureaus and commissions, I believe that the American Bar Association, rather than state and local bar associations, shall have to and should take the lead. The Special Committee on Administrative Law of that association now has under consideration the draft of a proposed bill relating to the right of review and appeals from decisions of all federal administrative agencies. Post war problems, particularly in connection with the renegotiation of governmental war contracts, call for prompt and serious consideration by that association. I understand that the attorney general is now seeking enactment of legislation to vest jurisdiction over renegotiation appeals in a court, preferably the court of claims. Such an arrangement would, of course, restrict the practice to lawyers in appellate cases at least.

The practice of law is not necessarily confined to an appearance in court. It has been held that a person may never appear in court and yet be engaged in the practice of law. Thus, one appearing and practicing before a public service or tax commission can be just as guilty of the illegal practice of law as one who makes it a practice, let us say, to prepare and draft legal instruments. It is the character of the act and not the place where the act is performed which is the decisive factor.

We all know that a corporation cannot practice law. Automobile clubs, which, for the membership fee involved, furnish counsel, free of charge, to represent and defend any member in any proceeding arising out of the operation of the motor vehicle or furnish consultation and legal advice free of charge to a member pertaining to the use or operation of his automobile, have been held in contempt of court because of their unauthorized practice.

The courts have the right to inquire by what authority one assumes to practice law, and to hold the parties in contempt, or issue injunctions restraining them in their activities, or issue such other orders as may be appropriate. In the *Meunier* case, for example, the plaintiff lay adjuster sought to collect a fee from the defendant for his services. An intervention was filed on my behalf, and on that of other practicing attorneys and the local bar association, as officers of the court, setting up that the plaintiff was not a licensed attorney, that the facts on which he sought to recover disclosed that he was engaged in the unauthorized practice of law; that his was an immoral contract on which he should not be permitted to recover. And these contentions were upheld by the appellate court. So that, today, in Louisiana, at least, we have the necessary statutes, the jurisprudence and the machinery to break up the unauthorized practice of law. Whether we are to avail ourselves of these weapons or permit further encroachments on our profession is something that rests with the public and the members of the bar. Without their assistance and active cooperation, your committees will accomplish little. With their cooperation, much can be done to protect the integrity of the bar and prevent practices which are injurious to the public.